

## **15.07.00.00 - INSPECTION AND USE REQUIREMENTS**

### **15.07.01.00      Inspections**

Airspace is responsible for security and maintenance of all leased airspace sites, so must regularly inspect sites to ensure lessees are maintaining sites properly. Inspections of all developed sites are required quarterly and inspections of all non-developed sites (e.g., parking lots) are required annually. Some uses may require more periodic inspections. Airspace should inspect and document all activities related to the lessee's property management activities.

When a leased site is not properly maintained, Airspace shall immediately inform the lessee of the violation and provide the lessee with a list of actions that must be taken and a time period within which to make corrections. If action is not taken, Airspace may initiate default proceedings to secure the site.

If a condition requires **immediate attention** (e.g., public safety and hazardous materials), the lessee should be given a formal 30-day notice to correct the problem and properly maintain the premises or to quit pursuant to lease provisions. If the condition is not corrected within that time, the lessee is declared in default and served a three-day notice. Violations requiring a 30-day notice shall be reported to HQ A/S.

Airspace may negotiate with District Maintenance to assist with periodic inspections of occupied sites, charging their time to the Airspace account. As maintenance crews are in the field on a more regular basis, their assistance is needed in ensuring that hazardous or unsightly conditions do not occur. If problems are found, Maintenance should notify Airspace in writing.

### **15.07.01.01      Inspections of Vacant Sites**

District Maintenance is responsible for inspection, security, and maintenance of all vacant airspace sites within operating and non-operating right of way.

Maintenance work on vacant sites is charged to the appropriate maintenance expenditure authorization. Airspace should not budget property management funds (Object x058) for sites that are or will be

vacant. Airspace should also consider removing them from the Airspace inventory.

Airspace will advise Maintenance when a site has been vacated and there are no immediate plans to lease it. Maintenance will not automatically maintain vacant sites that appear to be leased (e.g., improved sites).

### **15.07.02.00      Column Protection**

Airspace sites underneath highway structures require special provisions to protect support columns. Two basic elements to consider in determining what type of protection is required is based on:

- Design of the columns.
- How the property will be used.

If the columns are made of steel and the use is anything other than passive (e.g., park or landscaping use), they must be protected as described in Exhibit 15-EX-11. Note that use of 0.109 galvanized steel pipe is not acceptable as a barrier protecting steel columns.

If the columns are concrete, the Structures Office will determine specific column protection. Protection may not be required for all parking leases as the types of vehicles and the specific parking area may not mandate barriers. Heavy usage, pattern of traffic, truck parking, and RV storage, however, require the maximum level of column protection. The required protection method ranges from nominal to sophisticated.

On all new leases, renewals, or extensions, column protection must be installed as part of the terms for renewing, extending, or leasing the site.

See Exhibit 15-EX-11 (multiple pages) for various methods of column and other structural protections, including backflushing.

#### **15.07.03.00**      **Backflushing**

Vertical drains are susceptible to clogging. On open systems, Structures Maintenance must backflush with air and water from the outlet end.

Backflushing is very difficult where enclosed columns and closed drainage systems have been installed. To make backflushing possible on closed systems, gate valves accessible from within the building are required on the outlet end of column drains.

#### **15.07.04.00**      **Highway Structures**

All proposed developments underneath a highway structure (e.g., buildings, multilevel parking structures, recreational areas) require the lessee to prepare a Project Study Report (PSR) addressing the safety and potential liability of leasing the site. Issues to address are number and frequency of people at the site, proposed use, hazardous or valuable materials to be stored, and current status of seismic retrofit work on the structure and its columns.

HQ A/S will review and approve the PSR.

At-grade parking and open storage proposals to use an airspace site underneath a highway structure will require less review than a parking structure or office building.

See Reference File for the most current exhibits to be attached to long term development lease agreements for airspace sites underneath structures.

#### **15.07.05.00**      **Mini-Warehouse Inspections**

Inspections of mini-warehouse structures should include reviewing the resident manager's restrictions on storage of high value or high risk personal property. The resident manager may be required to provide immediate access to individual storage units for Airspace or Fire Marshal inspection. Airspace should review the lease agreement for specific provisions on access and inspections. Airspace should review the lessee's standard sublease agreements to ensure the tenants are advised of all the Department's restrictions and rights.

#### **15.07.06.00**      **Groundwater Inspections**

Local agency or other mandate may require Airspace to inspect Airspace sites after a storm to ensure standing water does not collect contaminants before entering the storm water drainage system. Typical sites are paved parking and open storage sites that may have oil and gas residue.

#### **15.07.07.00**      **Encroachment Permits**

Encroachment permits are issued for all Airspace sites when construction occurs. This requirement applies to new paving, striping, lighting, electrical, and curbing, as well as all buildings. Modifications to an existing parking or storage area's traffic pattern may also require an encroachment permit. Minor modifications to the site will generally not require a permit.

Refer to the Encroachment Permits Manual for specifics.

#### **15.07.07.01**      **Encroachments by Exception**

Encroachments in access controlled right of way are handled by an exception process. The Program Manager for Design and Local Programs, with assistance from the Encroachment Advisory Group (EAG) in HQ, will review district/region recommendations to allow use of the operating right of way when safe and non-interfering. Typical requests are:

- Utility company installation of a pipeline parallel to the right of way line (not an Airspace use).
- Telecommunications carrier access to maintain the antenna and/or vault from the travelway (part of the site license agreement).
- Access from the travelway to adjoining private property (no exceptions granted).
- Access from adjoining property to landscape or otherwise improve the appearance of the private property (can be an Airspace use or handled by cooperative agreement through the Office of Landscape Architect).

Airspace should coordinate work with the Permits Office before transmitting the request to the EAG.

FHWA will need to concur with any approvals to allow private entities permanent access.

#### **15.07.07.02**      **Permits for Telecommunications Licenses**

The Telecommunications License Program may require three encroachment permits to perform work in the right of way. These are:

- **Survey Permit** - to test the radio frequency of proposed facility prior to submitting preliminary proposals to Airspace.
- **Encroachment Permit** - to construct if proposed use is approved.
- **Annual Permit** - to maintain the equipment if the proposal is within operating right of way.

Refer to the Telecommunications License Process and Guidelines and the Encroachments Manual for more information.

#### **15.07.07.03**      **Permits Office**

As required in the lease agreement, the lessee shall obtain an encroachment permit prior to construction. In no case shall an encroachment permit substitute for a lease.

Lessees may be required to obtain an encroachment permit prior to making any changes to the airspace site. The standard lease agreement requires Airspace to advise the Permits Office that all DARC concerns have been satisfactorily addressed and that DARC has reviewed and approved the final plans.

Airspace should formally advise the lessee of the encroachment permit process (e.g., application and required sets of plans). A copy of the letter to Permits will advise that all final approvals (e.g., environmental, local building permit, and DARC review) have been obtained and the lease agreement has been executed.

The lessee must obtain a performance bond and a payment bond, or a performance bond containing the provisions of the labor and material bond supplied by tenant's contractors, provided the bonds are issued jointly to tenant and Caltrans as obligees. An "Irrevocable Letter of Credit" is not acceptable as evidence for performance of a construction obligation.

**NOTE:** Permits Office does not accept dual obligee bonding. Caltrans must be the only agency on the bond.

#### **15.07.07.04**      **Monitoring Construction**

Permits and Airspace shall carefully monitor construction of all developments on airspace sites. The permit shall provide that lessee will not occupy the improvements until all work is completed to the Department's satisfaction and a notice of completion has been issued to the lessee.

These permits shall specify that notice to the Bridge Structures Unit is required 48 hours prior to installing any attachments to a structure. If construction involves bridge structures, Airspace may request assistance from Structures Operations in monitoring the project.

Any changes in the plans shall require prior written approval of Airspace and Permits and revised plans covering these changes must be attached to the permit.

The local agency's planning department issues a Notice of Completion in accordance with their building permit. Permits issues an Encroachment Permit Completion Notice. The Permits Inspector does not ensure that building construction conforms to local standards; that is the responsibility of the local agency.

A copy of the final plans shall be forwarded to Structures Operations to ensure that a complete set of as-builts is on file for every structure in the State.

#### **15.07.08.00**      **State Fire Marshal Inspections**

23 CFR 713, Subpart B, requires that the State Fire Marshal (SFM) concur with proposed airspace uses. SFM will inspect for fire safety, unapproved construction, illegal or dangerous storage practices, wiring, fire extinguishers, and sprinklers.

The Office of Structure Maintenance and Investigations (OSM&I) established general guidelines (Exhibit 15-EX-12) that satisfy FHWA requirements and that SFM uses to inspect all facilities. Airspace should advise potential developers of these standards.

The regional SFM supervisor, whose final approval is required for development leases, storage of higher risk items (e.g., recycling centers), and all uses

underneath a structure, is a member of the DARC. At a minimum, separate copies of the preliminary and final plans for development should be submitted to the regional SFM office for review and comments.

The SFM will also make an initial inspection of telecommunications wireless facility pre-fabricated shelters.

HQ A/S is the Contract Manager for the SFM's annual contract.

#### **15.07.08.01**      **SFM Inspection Responsibilities**

All lease agreements require SFM have access to the property at any reasonable time for appropriate inspection of the site.

Annually, Airspace and the SFM will develop a list and schedule of required inspections, identifying those sites needing quarterly or annual inspections and any new sites that will be leased requiring an initial and periodic inspection.

The SFM will conduct quarterly internal and external inspections of all buildings, annual inspections of open storage areas, inspections by request, and proposals for construction of buildings.

#### **15.07.08.02**      **Conducting Inspections**

The SFM will conduct inspections per the established schedule, contacting Airspace when a problem is identified, when assistance is needed to gain access to the site, or when the inspection cannot occur as scheduled.

#### **15.07.08.03**      **Inspection Reports**

The SFM will submit an inspection report, identifying any areas needing immediate correction. Airspace will confirm the problem and give the lessee a 30-day notice to correct deficiencies. Airspace may initiate default proceedings if lessee does not correct the problem.

#### **15.07.08.04**      **Special Requests**

Airspace may request special assistance from the SFM for:

- Persistent problems with lessee's correction of noted deficiencies, especially if Airspace has instituted legal action.
- Situations involving extreme danger of fire or explosion requiring SFM and Airspace to take immediate action to prevent the lessee from continuing the practice.

The SFM must send a written report within one week. Airspace will forward a copy to HQ A/S.

#### **15.07.09.00**      **Hazardous Materials and Waste**

The Department's policy is to ensure that all airspace sites are, and continue to be, free of hazardous materials and waste. A material is hazardous if it poses a threat to human health or the environment. Hazardous materials are defined in the California Code of Regulations, Title 26, Division 4, Section 8-339.

Airspace must review all proposals to use or store hazardous materials on an Airspace site. The Hazardous Waste Coordinator (HWC) should be included in the DARC to ensure any approved use of hazardous material is under control and in accordance with applicable statutes and regulations. Of particular concern are materials that are flammable, reactive (subject to spontaneous explosion or flammability), corrosive, toxic, or radioactive.

Hazardous **waste** is any of the above materials that have escaped or been discarded or abandoned creating a potential liability for the Department. Airspace should closely monitor all approved uses of hazardous materials on an airspace site to ensure conformity with applicable laws, regulations, and local ordinances.

#### **15.07.09.01**      **Inspections**

Airspace sites should be inspected regularly for hazardous materials or waste that could contaminate the property. If Airspace discovers hazardous waste, the following action should be taken.

- **Hazardous Waste Exists** - If lessee's operation is causing the waste, notify lessee the action must cease or the lease will be terminated. Lessee is required to cleanup any hazardous

waste or material. Cooperation with the HWC, Legal, and Project Development may be required. HQ A/S must specifically approve any new lease or lease renewal for a site confirmed to contain hazardous waste or materials.

- **Hazardous Materials Exist** - The risk of allowing the operation to continue with possible cleanup costs must be weighed against net rent, long-term liability, community impact and any positive factors. Document the justification for continuing the lease and retain in the file.

In each situation, the lease agreement should be reviewed to determine what is allowed and what remedial action is needed. Airspace should request amending the lease agreement to include the standard hazardous waste clause if the lessee will continue to occupy the site.

HWC can assist Airspace in all inspections and determinations of hazardous materials or waste.

#### **15.07.09.02**      **Hazardous Waste Coordinator**

If inspection of an Airspace site indicates a potential for a problem with hazardous waste, Airspace should formally request HWC to investigate and test the site immediately to determine if the site is actually or potentially contaminated.

The HWC will inspect the site and determine if:

- **Testing Is Not Necessary** - HWC provides a written statement that no hazardous waste is present.
- **Further Investigation Is Necessary** - HWC hires a consultant to determine if hazardous waste actually exists.
- **No Hazardous Waste Is Present** - Lessee is authorized to use hazardous materials but the use prompts the HWC to recommend future inspections and specific controls to reduce the Department's potential liability.
- **Hazardous Waste is Present** - Lessee is required to immediately and effectively remediate hazardous situations.

HWC's recommendation may require corrective action by the lessee, more frequent monitoring of the condition, or termination of the current use or the lease agreement.

#### **15.07.09.03**      **Inventory**

Airspace and HWC must ensure all vacant or occupied sites with any identified hazardous waste are included in the tracking system maintained by Project Development. This includes all Airspace sites with underground storage tanks.

#### **15.07.09.04**      **Potential Surface Contamination**

Certain developments may have a greater potential for hazardous waste contamination. Examples include service stations, paint companies, machine shops, light and heavy industrial manufacturing, fertilizer storage, junk and auto wrecking yards, and muffler shops. Proposals to use Airspace sites for these uses should not be allowed in most cases.

#### **15.07.09.05**      **Lease Clause**

Standard Airspace leases contain a hazardous materials clause stating the lessee is responsible for cleanup and mitigation of all hazardous material and waste deposits on the site, regardless of the source or cause.

Use of the hazardous waste clause and the lessee's proposed list of hazardous materials to be permitted should alert Airspace to potential problems. Before any lease is executed, Airspace must inquire into the specific type of use and consider the risk, with advice from the HWC as needed.

#### **15.07.10.00**      **Default**

The lessee is considered in default if any of the lease provisions are violated. Typical defaults are:

- Delinquent account.
- Insurance certificate not current.
- Failure to maintain site to current standards.
- Current use not authorized.
- Allowing others to use the site without Airspace's prior approval (e.g., assignment and sublease).

Airspace should monitor each Airspace lease to ensure any violations are found while there is still time to take corrective action (e.g., collect delinquent rent prior to lessee vacating, getting a current insurance certificate before a situation occurs, and

preventing hazardous materials from becoming hazardous waste).

The lessee must correct violations in a timely manner. To ensure this, Airspace should issue formal written notice to make corrections within a specific time frame (usually 30 days, unless it is a safety issue, which may require a 3-day notice). If action is not

taken, Airspace should initiate default proceedings (e.g., termination, eviction, lawsuit, and collections).

Prior to initiating action, Airspace should carefully review the lease agreement to determine the appropriate remedies available. HQ A/S and Legal should be contacted to determine if there are additional steps that can be implemented.